

1 Adam R. Pechtel / WSBA #43743  
2 Pechtel Law PLLC  
21 N Cascade St  
3 Kennewick, WA 99336  
Telephone: (509) 586-3091

4 Attorney for Defendant

5  
6 United States District Court  
7 Eastern District of Washington  
Before the Hon. Salvador Mendoza, Jr.  
8

9 United States of America,

Plaintiff,

10 v.  
11

12 Ivan Renteria Castillo.

13 Defendant.

No. 4:19-CR-6049-SMJ-1

Defendant Castillo's Motion to  
Dismiss Indictment

April 2, 2019 at 9:30 AM  
*With oral argument*

14 The United States knew that Efrain Carrillo Gonzalez ("Mr.  
15 Carrillo) would give material and favorable testimony for Mr.  
16 Renteria Castillo ("Mr. Castillo") yet deported him to Mexico anyway.  
17 By doing so, the United States violated Mr. Castillo's right to  
18 compulsory process under the Sixth Amendment. This violation of a  
19 fundamental constitutional right requires the Court to dismiss the  
20 indictment with prejudice.

---

Defendant Castillo's Motion to  
Dismiss Indictment - 1

**A. Summary of Facts**

The United States alleges that Mr. Castillo, Mr. Carrillo, and Mr. Solares Gastelum (“Mr. Solares”) travelled on August 9, 2019 from California to Washington in a vehicle containing methamphetamine.<sup>1</sup> Law enforcement officers began following the vehicle in Kennewick, Washington and continued following it until it stopped in Mesa, Washington.<sup>2</sup> When the vehicle stopped in Mesa around 2:00 PM, Mr. Solares and Mr. Carillo were detained by TFO Rogel for immigration violations.<sup>3</sup> Law enforcement officers were not able to locate Mr. Castillo until 8:00 PM that evening at which time he was detained by TFO Rogel for immigration violations.<sup>4</sup> TFO Rogel and SA Pratt transported all three subjects to Ritzville, Washington where they were transferred to the custody of Border Control agents.<sup>5</sup>

Law enforcement officers attempted to interview all three subjects three days later on August 12, 2019 in Richland, Washington.<sup>6</sup> Mr. Castillo exercised his constitutional right to remain silent, but Mr.

---

<sup>1</sup> Bates 10000109 (meth); 10000133-134 (travel).

<sup>2</sup> Bates 00000202.

<sup>3</sup> Bates 10000129 (Solares); Bates 10000131 (Carrillo).

<sup>4</sup> Bates 1000094 (Castillo).

<sup>5</sup> See *supra* fn.2 and fn.3.

<sup>6</sup> Bates 10000096 (Castillo); Bates 10000120, 10000122 (Carrillo); Bates 00000349 (Solares).

1 Solares and Mr. Carrillo gave recorded interviews.<sup>7</sup> Mr. Castillo only  
2 knows the substance of Mr. Solares' interview and Mr. Carrillo's  
3 interview based on identical summaries included in four search  
4 warrant applications. Mr. Castillo also received a law enforcement  
5 report that summarized Mr. Carrillo's interview (but not co-  
6 defendant Solares' interview).<sup>8</sup> Mr. Castillo requested copies of Mr.  
7 Carrillo's recorded interview on September 30, 2019 from the United  
8 States, but did not receive the recording until January 14, 2020.<sup>9</sup>  
9 The filing of this motion was delayed to obtain a side-by-side  
10 translation of the recorded interview.

11 According to the search warrant applications, Mr. Carrillo told the  
12 interviewing officers:

13 CARRILLO and SOLARES [] drove together to Los Angeles,  
14 California. CARRILLO advised that he and SOLARES []  
15 stayed in a hotel for approximately two days. While in the  
16 Los Angeles area, [] SOLARES [] told him to stay at the  
17 hotel while SOLARES [] was gone for approximately one  
18 hour. This was the only time CARRILLO [] was not with  
19 SOLARES []. While with SOLARES [], CARRILLO overheard  
20 SOLARES [] on the phone constantly. The phone calls were  
of short duration and the conversations were in code that  
CARRILLO believed was discussion to arrange the  
transportation of narcotics.... CARRILLO, SOLARES [] and

---

<sup>7</sup> Bates 10000096 (Castillo); Bates 10000120-121 (Carrillo); Bates 00000244-247, 279-282, 314-317, 349-352 (Solares; Carrillo)

<sup>8</sup> Bates 00000244-247, 00000279-282, 00000314-317, 00000349-352, 10000120-121.

<sup>9</sup> Letter from Van Marter to Pechtel (January 14, 2020).

1 [CASTILLO] were all in the white Kia Optima and []  
2 SOLARES [] and [CASTILLO] switched off driving. On the  
3 return trip to Washington, [] SOLARES [] and CARRILLO  
4 picked [CASTILLO] up somewhere north of Los Angeles.  
5 CARRILLO [] had never met [CASTILLO] before. CARRILLO  
6 [] was unaware there were narcotics in the vehicle.<sup>10</sup>

7 According to FBI Special Agent Brett Grover, Mr. Carrillo told  
8 officers:

9 [CARRILLO] was invited to travel to California by DUVIEL  
10 HUMBERTO SOLARES GASTELUM.

11 They left Tuesday (August 6, 2019) and traveled to Los  
12 Angeles. They stayed in a hotel. IVAN ALONSO RENTERIA  
13 CASTILLO did not travel to Los Angeles with them.

14 While in Los Angeles [SOLARES] was consistently making  
15 phone calls.

16 [SOLARES] left one time on foot and told [CARRILLO] to  
17 stay in the hotel for approximately one hour.

18 [CARRILLO] never saw drugs. However, [SOLARES] was  
19 conducting short duration phone calls using code words.

20 [SOLARES] had two phones on the trip. He passed one to  
[CARRILLO] and asked him to hold it before they were  
arrested. The iPhone was his and the other phone  
belonged to [SOLARES]. [CARRILLO] provided the code to  
his phone as his date of birth ([redacted]).

[SOLARES] was going to help [CARRILLO] with some debt  
that he owed for a court case for traveling with him to  
California

[CARRILLO] had never met CASTILLO before they picked  
him up on Thursday (August 8, 2019) on their way back

---

<sup>10</sup> Bates 00000246; 281; 316; 351.

1 to Washington. They picked him up on the side of a road  
2 near a gas station. He only had a small plastic bag with  
him.

3 When they were pulled over [SOLARES] told CASTILLO  
4 that it was over. [SOLARES] and [CASTILLO] traded off  
driving during the trip.<sup>11</sup>

5 Attached hereto as Exhibit A is a copy of a side-by-side translation  
6 of the entire recorded interview prepared by Sharon Yedidia. Ms.  
7 Yedidia will be qualified as an expert witness in Spanish translation  
8 at the hearing on this motion and authenticate the exhibit.

9 Shortly after 4:00 PM on August 7, 2019, Defendant Solares  
10 purchased brake pads at an AutoZone store in Los Angeles,  
11 California.<sup>12</sup>

12 Law enforcement executed a search warrant on the vehicle on  
13 August 13, 2019 and found ten packages of methamphetamine in  
14 concealed in the trunk of the vehicle.<sup>13</sup> Two days later, ICE Officer  
15 Jeffrey White transferred custody of Mr. Castillo and Mr. Solares to  
16 TFO BJ Moos and ICE Officer Ruiz pursuant to an arrest warrant.<sup>14</sup>

17  
18  
19 

---

<sup>11</sup> Bates 10000120-121.

<sup>12</sup> Bates 20000025.

<sup>13</sup> Bates 00000352.

<sup>14</sup> Bates 10000105.

1 The United States deported Efrain Carrillo to Mexico on October  
2 7, 2019.<sup>15</sup>

3 **B. Law**

4 “In all criminal prosecutions, the accused shall enjoy the right ...  
5 to have compulsory process for obtaining witnesses in his favor....”  
6 U.S. CONST. amend. VI. However, “the prompt deportation of illegal-  
7 alien witnesses” is justified by “the responsibility of the Executive  
8 Branch faithfully to execute the immigration policy adopted by  
9 Congress[.]” *United States v. Valenzuela-Bernal*, 458 U.S. 858, 872,  
10 102 S. Ct. 3440 (1982). This statutory duty to deport, however, is  
11 balanced against the accused’s right to compulsory process under  
12 the Sixth Amendment. *See United States v. Leal-Del Carmen*, 697  
13 F.3d 964 (9th Cir. 2012). This balance requires the government to  
14 make a “good-faith determination that [the witness] possess[es] no  
15 evidence favorable to the defendant in a criminal prosecution.” *Id.*  
16 To establish a violation, the accused must show “that the evidence  
17 lost would be both material and favorable to the defense.” *Id.* at 573.

18  
19  
20  

---

<sup>15</sup> Bates 10000190.

1 The Ninth Circuit interprets this as “a two-pronged test of bad  
2 faith and prejudice.” *United States v. Dring*, 930 F.2d 687, 693 (9th  
3 Cir. 1991); accord *United States v. Velarde-Gavarrete*, 975 F.2d 672,  
4 675 (9th Cir. 1992). “The question of bad faith thus turns on what  
5 the government knew at the time it deported the witness.” *United*  
6 *States v. Leal-Del Carmen*, 697 F.3d 964, 970 (9th Cir. 2012).  
7 Specifically, “if the government interviews the witness or has other  
8 information suggesting that [the witness] could offer exculpatory  
9 evidence, the government may not deport him without first giving  
10 defense counsel a chance to interview him.” *Id.* To be material, the  
11 evidence must have the *possibility* of affecting the outcome of the  
12 trial. *United States v. Leal-Del Carmen*, 697 F.3d 964, 971 (9th Cir.  
13 2012) (*quoting Valenzuela-Bernal*, 458 U.S. at 868) (“Implicit in the  
14 requirement of materiality is a concern that the suppressed evidence  
15 might have affected the outcome of the trial.”).

16 Here, the government was aware that Mr. Carrillo “could offer  
17 exculpatory evidence” for Mr. Castillo. Mr. Castillo is charged with  
18 possessing a controlled substance with the intent to distribute. ECF  
19 No. 24. To convict, the government must prove beyond a reasonable  
20 doubt that Mr. Castillo **knowingly** possessed methamphetamine.

1 *See e.g., United States v. Orduno-Aguilera*, 183 F.3d 1138, 1140 (9th  
2 Cir. 1999); *United States v. Seley*, 957 F.2d 717, 721 (9th Cir. 1992).  
3 Thus, any evidence that Mr. Castillo did **not know** there was a  
4 controlled substance in the vehicle is material and favorable to his  
5 defense. Mr. Carrillo's interview demonstrated that the  
6 methamphetamine was mostly likely put into the vehicle in Los  
7 Angeles since (1) he identified no alternative purpose for Mr. Solares  
8 to travel to Los Angeles, (2) while in Los Angeles, Mr. Solares made  
9 many short phone calls using code words that Mr. Carrillo  
10 interpreted to be about drug trafficking, and (3) no other alternative  
11 locations were identified from which the drugs could have been put  
12 in the vehicle (viz. all Mr. Castillo had with him when he got into the  
13 vehicle was "a small plastic bag"). Since Mr. Carrillo also told officers  
14 that Mr. Castillo did not travel to Los Angeles with them and they  
15 actually picked him up north of Los Angeles, then Mr. Castillo could  
16 not have been present when the methamphetamine was put into the  
17 vehicle. This strongly corroborates his lack of knowledge defense  
18 and is not available from any other available witnesses.  
19 Furthermore, Mr. Carrillo would testify that Mr. Castillo and co-



1 defendant Solares hardly spoke at all during the drive to Washington  
2 and they only discussed family, not “business.”

3 Mr. Castillo thus establishes both prongs of the test. First, Mr.  
4 Carrillo had material and favorable testimony for Mr. Castillo.  
5 Second, the Government was aware of this testimony and deported  
6 Mr. Carrillo anyway. The question then turns to the appropriate  
7 remedy.

8 Simply permitting Mr. Castillo to introduce Mr. Carrillo’s hearsay  
9 statements at trial is inadequate. Mr. Castillo has the constitutional  
10 right to ask not only the same questions that law enforcement  
11 officers asked, but to fully develop Mr. Carrillo’s testimony. This  
12 would include details such as (1) Mr. Carrillo did not hear Mr.  
13 Solares speaking on the phone with Mr. Castillo in Los Angeles, and  
14 (2) they did not discuss controlled substances during the drive to  
15 Washington, and (3) they picked up Mr. Castillo more than seven  
16 hours north of Los Angeles, and (4) Mr. Castillo’s small plastic bag  
17 was too small to hold the ten bundles of methamphetamine, and (5)  
18 what reason Mr. Solares gave to Mr. Carrillo for disappearing for an  
19 hour, and (6) why Mr. Solares purchased brake pads in Los Angeles,  
20 among other testimony.

1 Simply permitting Mr. Castillo to introduce Mr. Carrillo's hearsay  
2 statements at trial is an insufficient remedy. The only viable remedy  
3 is dismissal of the indictment. While this is severe remedy, it is the  
4 least severe remedy that can protect Mr. Castillo's constitutional  
5 right to compulsory process.

6 A proposed order is filed herewith.

7  
8 Dated: August 28, 2019

Respectfully Submitted,

9 s/Adam R. Pechtel

10 Adam R. Pechtel/ WSBA #43743

Attorney for Defendant

Pechtel Law PLLC

21 N Cascade St

Kennewick, WA 99336

12 Telephone: (509) 586-3091

13 Email: adam@pechtellaw.com

SERVICE CERTIFICATE

I certify that on March 2, 2020, I electronically filed the foregoing ***Defendant Castillo's Motion to Dismiss Indictment*** with the District Court Clerk using the CM/ECF System, which will send notification of such filing to the following:

Stephanie Van Marter, Attorney for Plaintiff

s/Adam R. Pechtel  
Adam R. Pechtel/ WSBA #43743  
Attorney for Defendant  
Pechtel Law PLLC  
21 N Cascade St  
Kennewick, WA 99336  
Telephone: (509) 586-3091  
Email: adam@pechtellaw.com